

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Duracell U.S. Operations, Inc.,)
Plaintiff,) No.: _____
v.)
JRS Ventures, Inc.,) JURY TRIAL DEMANDED
Defendant.)

)

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

Plaintiff Duracell U.S. Operations, Inc. (“Duracell”) alleges as follows:

NATURE OF THE ACTION

1. This is a Complaint for damages and injunctive relief arising from Defendant JRS Ventures, Inc.’s (“JRS Ventures”) acts of willful trademark infringement and unfair competition under federal and state law. JRS Ventures is knowingly engaging in the unauthorized importation and/or distribution of gray market Duracell batteries which are materially different from the Duracell alkaline batteries (such as AAA, AA, C, D, and 9V) authorized for sale directly to U.S. consumers (the “Duracell® Products”). JRS Ventures imports, distributes, and/or sells within the United States certain Duracell batteries that are intended to be sold solely to Original Equipment Manufacturers (“OEMs”). These diverted products are offered for sale in unauthorized packaging that fails to include important information for consumers (the “Infringing Products”).

2. These Infringing Products differ from the Duracell® Products, authorized and intended for sale in the United States, in numerous respects. For example, the Infringing Products fail to provide certain information present on every Duracell® Product packaging, including a description of its guarantee and the phone number to Duracell’s customer service

department. Further, the Infringing Products, which are clearly labeled “Original Equipment Accessory,” are intended to only be sold directly to OEM’s under the Duracell OEM Program, and not to retailers or direct to consumers.

3. JRS Ventures’ unauthorized gray market importation and/or subsequent distribution is actionable because such distribution causes or is likely to cause purchaser or consumer confusion, mistake, and/or deception to the detriment of Duracell, as well as to the detriment of purchasers and consumers in the United States. Purchasers and consumers in the United States have come to expect, *inter alia*, a certain quality, packaging, and customer service for the Duracell® Products as a result of Duracell’s extensive branding, marketing, sales, quality control, and customer service efforts in the United States. When such purchasers and consumers encounter the Infringing Products, which bear certain Duracell trademarks, but which are otherwise materially different from what U.S. purchasers and consumers expect, they are likely to be confused and indeed disappointed. Further, such sales of Infringing Products cause great damage to Duracell and greatly damage the goodwill in Duracell’s valuable trademarks.

4. Based on these and other unlawful actions by JRS Ventures, Duracell asserts the following specific claims: First Cause of Action – trademark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114; Second Cause of Action – false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); Third Cause of Action – unfair competition in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505 *et seq.*

PARTIES

5. Plaintiff Duracell is a Delaware corporation with its executive offices located at 181 W. Madison Street, Chicago, IL, 60602.

6. Upon information and belief, Defendant JRS Ventures is a Missouri corporation with its principal place of business located at 37 Elaine Drive, O'Fallon, MO 63366.

JURISDICTION

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1338, and 28 U.S.C. § 1367. Duracell's claims are predicated upon 15 U.S.C. § 1114 and 15 U.S.C. § 1125(a), and substantial and related claims under the law of the State of Illinois.

8. On information and belief, this Court has personal jurisdiction over JRS Ventures because JRS Ventures (a) transacts business in Illinois; (b) contracts to supply goods in Illinois; (c) maintains and operates a website that is accessible to residents of the State of Illinois through which it actively advertises and promotes the infringing products; (d) causes tortious injury by acts in Illinois; and (e) regularly solicits business in Illinois and derives substantial revenue from goods purchased by consumers in Illinois. The infringing products at issue are available for sale, and have been sold, in this District.

VENUE

9. Venue is proper in this district under 28 U.S.C. § 1391(b), because a substantial part of the events giving rise to the claims herein occurred within this judicial district.

FACTS

The Duracell® Trademarks

10. Duracell, one of the world's largest producer of batteries for consumer electronics products, is the owner of numerous registered Duracell® trademarks. For more than 50 years, Duracell has been selling its batteries marked with its famous DURACELL name and a copper-and-black color scheme that are covered by "incontestable" United States trademark registrations (collectively, as described in ¶¶ 7-12 below, the "Duracell® Marks").

11. Duracell owns the federal trademark registration for the DURACELL word mark in International Classes 007, 009, 011, 012, and 015, as well as U.S. Class 021, which was issued by the USPTO on or about July 27, 1965 (U.S. Trademark Registration No. 793,273) and is attached hereto as Exhibit A. This mark was first used in commerce on or around May 14, 1964.

12. Duracell also owns the federal trademark registration for the highly distinctive and well-known “coppertop” design of the Duracell® battery. Duracell owns this design mark in International Class 009 and U.S. Class 021, which was issued by the USPTO on or about May 18, 1976 (U.S. Trademark Registration No. 1,039,589) and is attached hereto as Exhibit B. This mark was first used in commerce on or around September 1973.

13. Duracell also owns the federal trademark registration for the highly distinctive and well-known “coppertop” design of the Duracell® battery. Duracell owns this design mark in International Class 009 and U.S. Class 021, which was issued by the USPTO on or about December 30, 1980 (U.S. Trademark Registration No. 1,144,787) and is attached hereto as Exhibit C. This mark was first used in commerce on or around September 1973.

14. Duracell also owns the federal trademark registration for the highly distinctive and well-known “coppertop” design of the Duracell® battery. Duracell owns this design mark in International Class 009 and U.S. Class 021, which was issued by the USPTO on or about May 5, 1981 (U.S. Trademark Registration No. 1,152,937) and is attached hereto as Exhibit D. This mark was first used in commerce on or around September 1973.

15. Duracell also owns the federal trademark registration for the DURACELL word mark in International Class 009 and U.S. Classes 021, 023, 026, 036, and 038, which was issued by the USPTO on or about April 18, 2006 (U.S. Trademark Registration No. 3,082,777) and is

attached hereto as Exhibit E. This mark was first used in commerce on or around February 15, 2004.

16. Duracell also owns the federal trademark registration for the DURACELL word mark in International Class 009 and U.S. Classes 021, 023, 026, 036, and 038, which was issued by the USPTO on or about September 19, 2006 (U.S. Trademark Registration No. 3,144,722) and is attached hereto as Exhibit F. This mark was first used in commerce on or around May 14, 1964.

17. These Duracell® Marks have long held “incontestable” status and serve as conclusive evidence that purchasers rely on the registered Duracell word marks and copper-and-black color scheme as a way to identify the source of a battery product.

Duracell® Products

18. Duracell is engaged in the manufacture, marketing, licensing, sale, and worldwide distribution of batteries.

19. Duracell manufactures alkaline batteries in many common sizes, such as AAA, AA, C, D, and 9V.

20. Duracell distributes its batteries through retailers and direct sales to consumers, as well as to OEMs through the Duracell OEM Program for use in electronic products that OEMs wish to sell with batteries included.

21. The batteries used for the Duracell OEM Program are manufactured in Duracell’s manufacturing facility in China, with the sole purpose of being distributed to OEMs only, and not for importation and direct sale to consumers in the United States.

22. Through its substantial advertising and promotional efforts, and its sales and relationships with its customers, Duracell has built up a highly valuable reputation and

substantial goodwill.

23. One very important component to Duracell's stellar reputation is its commitment to providing the best product experience to its customers. To accomplish this, Duracell carefully designs and controls, *inter alia*, the packaging and labeling of its products. All genuine Duracell packaging contains, for example, description of its guarantee and the phone number to Duracell's customer service department. For batteries sold through retailers or directly to U.S. consumers, Duracell offers a 10-year guarantee.

24. Moreover, Duracell's products that are intended to only be sold directly to OEMs under the Duracell OEM Program, and not to retailers or direct to consumers, are clearly labeled "Original Equipment Accessory" on the batteries themselves. For batteries sold through the Duracell OEM Program, Duracell offers a 1-year guarantee to the OEM.

Defendant's Infringing Conduct

25. In March 2017, Plaintiff discovered that Defendant is selling and distributing in the United States Duracell® alkaline batteries, size AAA, AA, C, D, and 9V, without authorization and in violation of Duracell's trademark rights (the "Infringing Products").

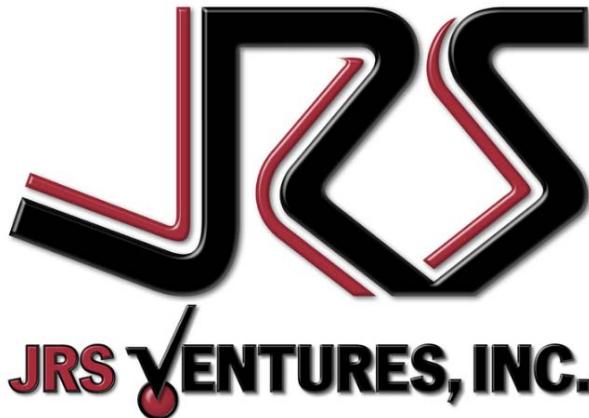
26. According to JRS Ventures' website, "[JRS Venture's] Duracell battery line allows you to purchase Duracell batteries at the lowest pricing anywhere." The website also showcases a "Duracell Battery Center." JRS, however, is not an authorized distributor of Duracell® products or displays, and this advertising is misleading to consumers. See images below:

NEW PRODUCTS • INFORMATION • VIEW PRODUCTS • CLOSEOUTS

SEARCH



WHOLESALE DISTRIBUTOR OF NAME BRAND PRODUCTS AT DISCOUNT PRICES



1-800-365-6174 SALES@JRSVENTURES.COM

JRS Ventures, Inc. is based in O'Fallon, Missouri, forty miles west of St. Louis, Missouri. JRS Ventures is one of the Midwest's largest wholesale distributors. We specialize in supplying retailers with name brand items at the lowest pricing available.

PRODUCT LINES

Our Charge n Go Smart Phone Accessory line is truly one of the hottest impulse sales in today's retail environment. Everybody has a smart phone and they need to keep it charged to stay productive and in touch with the fast paced world we live in. We carry a complete line of state of the art accessories in several different packaging styles to fit any retailer's needs. From attention grabbing counter displays, tubs or eye catching hangable blister packaging we have the products your customers need.

Our Duracell battery line allows you to purchase Duracell batteries at the lowest pricing anywhere. We also have an extensive line of memory products from Silicone Power which are guaranteed for

life. LED flashlights, bluetooth speakers, lighters, earbuds, headphones and seasonal closeouts are also terrific items for the retailer looking for one comprehensive source. We ship orders the same day most days and have exceptional turn around and customer service.

NEW PRODUCTS • INFORMATION • VIEW PRODUCTS • CLOSEOUTS

SEARCH



WHOLESALE DISTRIBUTOR OF NAME BRAND PRODUCTS AT DISCOUNT PRICES



Battery Display with Product

Customize your mix of carded or clam shell packs of first class alkaline batteries.

27. The Infringing Products include Duracell® batteries packaged in clamshells, blister packs, and shrink wraps. In all three executions, the consumer can see the battery, including the Duracell® name and the distinctive “coppertop” battery design. The blister packs also show an image of a Duracell® battery, with the DURACELL mark and trade dress clearly visible. See pictures of the Infringing Products below:





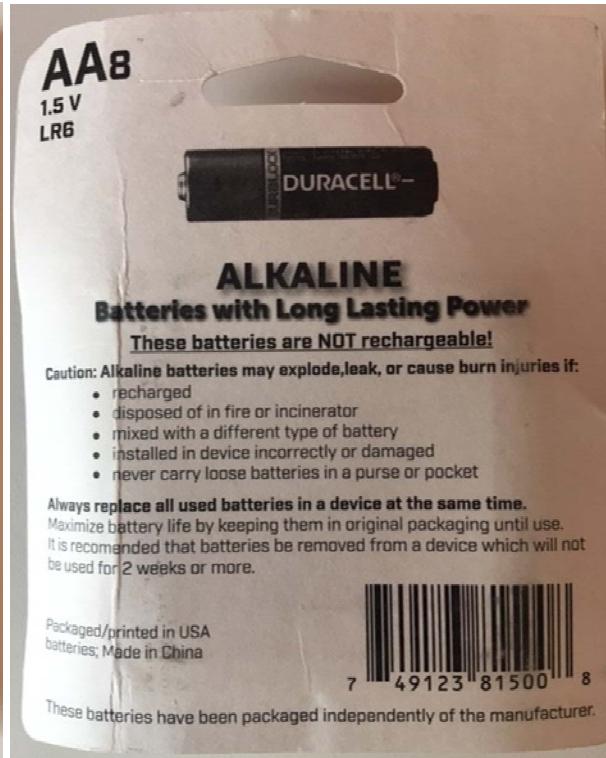
28. Although the batteries appear to be authentic Duracell products, many of them were manufactured in China, for the sole purpose of being distributed to OEMs only, and not for the importation and direct sale to consumers in the United States. See close-up pictures of the Infringing Products with "Original Equipment Accessory" written on the batteries below:



29. Moreover, none of the packaging was created by Duracell, and all of the Infringing Products' packaging omits vital information for the benefit of Duracell's customers, including a phone number for Duracell customer service and Duracell's OEM and customer guarantees. See pictures below:



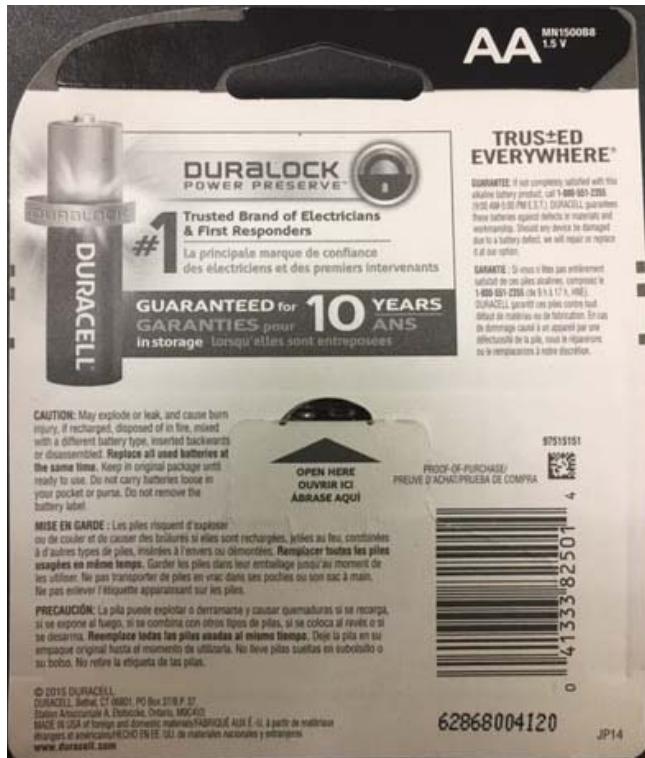
(Infringing Product – Front)



(Infringing Product – Back)



(Duracell® Product – Front)



(Duracell® Product – Back)



(Duracell® Product Guarantee)

30. The Infringing Products differ materially from the Duracell® Products and, as a result, infringe upon Plaintiff's valuable intellectual property in the Duracell® Marks.

31. Upon learning of JRS Ventures' unauthorized action, Duracell sent a letter demanding that JRS Ventures cease selling the Infringing Products. JRS Ventures rejected Duracell's demand, and continues its unauthorized distribution/sale/advertising of the Infringing Products.

32. Defendant's unauthorized actions have caused, and are likely to further cause, confusion, mistake, and deception of Plaintiff's consumers, customers, and potential customers. Specifically, Defendant's use of the Duracell® Marks is likely to lead Plaintiff's consumers, customers, and potential customers to mistakenly conclude that the sale of the Infringing Products originates from, or is authorized and/or approved by Plaintiff.

33. Defendant's unauthorized actions have also caused, and are likely to further cause, damage to Plaintiff's reputation and goodwill.

34. Finally, Defendant's unauthorized actions have caused Plaintiff to spend money, time, and other resources to investigate and mitigate the effects of Defendant's actions.

FIRST CAUSE OF ACTION
Federal Trademark Infringement
15 U.S.C. § 1114

35. Duracell incorporates Paragraphs 1 through 34 of this Complaint as if fully set forth herein.

36. Duracell owns all right, title, and interest in and to the Duracell® Marks and has standing to maintain an action for trademark infringement under 15 U.S.C. § 1114.

37. Without Duracell's authorization, JRS Ventures used the Duracell® Marks to market and sell the Infringing Products.

38. The Infringing Products differ materially from the Duracell® Products.

39. JRS Ventures' use of the Duracell® Marks constitutes trademark infringement pursuant to 15 U.S.C. § 1114.

40. Upon information and belief, JRS Ventures had actual and constructive knowledge of Duracell's ownership and rights in the Duracell® Marks prior to JRS Ventures' infringing use of the mark.

41. Upon information and belief, JRS Ventures used and continues to use the Duracell® Marks in commerce with actual knowledge of Duracell's rights and with actual knowledge that such use was and continues to infringe Duracell's rights, all with the intention to cause confusion, mistake, and/or deception.

42. JRS Ventures' use of the Duracell® Marks has caused, and is likely to cause, confusion, mistake, and/or deception as to the affiliation, connection, source, sponsorship, or association of the Infringing Product's association with Duracell and the Duracell® Products.

43. Upon information and belief, JRS Ventures' intentional and willful infringement of the Duracell® Marks has caused damage and will continue to cause damage to Duracell, and is causing substantial, immediate, and irreparable harm to Duracell for which there is no adequate remedy at law. Unless restrained by this Court, JRS Ventures will continue to infringe on the Duracell® Marks. Duracell is thus entitled to permanent injunctive relief.

SECOND CAUSE OF ACTION
False Designation of Origin
15 U.S.C. § 1125(a)

44. Duracell incorporates paragraphs 1 through 43 of this Complaint as if fully set forth herein.

45. JRS Ventures has used and continues to use the Duracell® Marks in connection with goods, in commerce, in a manner that is likely to cause confusion, mistake, or deception as to the characteristics, qualities, sponsorship, affiliation, or approval of their goods.

46. Through its offer and sale of Infringing Products, JRS Ventures has misrepresented and continues to misrepresent their nature, characteristics, and qualities.

47. Upon information and belief, JRS Ventures has intentionally and falsely designated the origin of their goods with the intention of deceiving and misleading the public at large, and of wrongfully trading on the reputation and goodwill of Duracell and the Duracell® Marks.

48. JRS Ventures' false designation of origin has caused damage and, unless enjoined, will continue to cause substantial, immediate, and irreparable damage to Plaintiff, its business reputation, and its goodwill, for which there is no adequate remedy at law, and which will continue unless restrained by this Court. Duracell is thus entitled to temporary, preliminary, and permanent injunctive relief.

THIRD CAUSE OF ACTION
Unfair Competition
815 ILCS 505 et seq.

49. Duracell incorporates paragraphs 1 through 48 of this Complaint as if fully set forth herein.

50. JRS Ventures' wrongful acts described above constitute unfair competition in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505 *et seq.*, as they are likely to deceive and mislead the public.

51. JRS Ventures' acts of unfair competition have caused and will continue to cause Duracell irreparable harm. Duracell has no adequate remedy at law for JRS Ventures' unfair competition.

52. Duracell is entitled to judgment enjoining and restraining JRS Ventures from engaging in further acts on infringement and unfair competition.

PRAYER FOR RELIEF

WHEREFORE, Duracell respectfully prays for the following relief:

A. Permanent injunctive relief, enjoining and prohibiting JRS Ventures, or its agents, servants, employees, officers, attorneys, successors and assigns, and all other in active concert or participation with JRS Ventures, from:

- i. Using the Duracell® Marks, or any versions thereof, in connection with the offer to sell and/or the sale of any product;
- ii. Infringing Duracell's registered trademarks;
- iii. Selling the Infringing Products or other altered versions of the Infringing Products in violation of Duracell's trademark rights; and
- iv. Assisting, aiding, or abetting any other person or entity in engaging in or performing any of the activities referred to in subparagraphs (i) through (iii) above.

B. An award of damages in an amount to be determined at trial;

C. An award of treble damages as provided by the Lanham Act, 18 U.S.C. § 1117(b);

D. An award of attorneys' fees and costs;

E. An award of punitive damages in an amount to be determined at trial; and

F. Any further relief the Court deems appropriate.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues in this case.

Dated: April 27, 2017

Respectfully submitted,

By: \s\ James T. Hultquist
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